

6.0 - ELSO - ENFORCEMENT - RESPONSE - PLAN -
ENFORCEMENT - SECTION



EAST CHICAGO SANITARY DISTRICT
INDUSTRIAL PRETREATMENT PROGRAM
ENFORCEMENT RESPONSE PLAN

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1.0 INTRODUCTION

In accordance with the Code of Federal Regulations (CFR) Title 40 Part 403.8 f (5) and Part III.A.4 of NPDES Permit IN00022829, East Chicago Sanitary District (District), as Control Authority, is required to develop an Enforcement Response Plan (ERP). This document describes how the District will investigate and respond to instances of noncompliance.

The District must enforce pretreatment program requirements on a strict liability basis. As such, every instance of noncompliance with the District's Sewer User Ordinance (SUO), regardless of fault, negligence, or intent, is a violation of the SUO that subjects the Industrial User (IU) to enforcement. However, while every instance of noncompliance may be a violation, all violations will not be met with the same initial enforcement response. The ERP will also apply to violations at non-permitted facilities.

The ERP is a guidance document. Although the ERP coordinates with the SUO, it is not part of the SUO, and shall not be made part of the SUO.

2.0 ADMINISTRATION AND JURISDICTION

All IUs discharging non-domestic wastewater to the District's Publicly Owned Treatment Works (POTW) are subject to the provisions of the ERP. The District consistently administers and implements all elements of the ERP. The ERP does not preclude the District from taking any, all, or any combination of actions contained in the ERP against a noncompliant IU.

3.0 ABBREVIATIONS

AO – ADMINISTRATIVE ORDER
CM - COMPLIANCE MANAGER
DISTRICT - EAST CHICAGO SANITARY DISTRICT
DU – DIRECTOR OF UTILITIES
EPA – ENVIRONMENTAL PROTECTION AGENCY
ERG – ENFORCEMENT RESPONSE GUIDE
ERP – ENFORCEMENT RESPONSE PLAN
IDEM – INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
IU – INDUSTRIAL USER
PC –PRETREATMENT COORDINATOR
NOV – NOTICE OF VIOLATION
POTW – PUBLICLY OWNED TREATMENT WORKS
SUO – SEWER USER ORDINANCE
TRC – TECHNICAL REVIEW CRITERIA

4.0 PERSONNEL RESPONSIBILITIES

4.1 Pretreatment Coordinator

The Pretreatment Coordinator (PC) is responsible for the day to day implementation and enforcement of the industrial pretreatment program through coordination and oversight of Pretreatment Assistant staff activities, identifying violations in a timely manner, and tracking of compliance issues and schedules.

To achieve this, the PC conducts the following duties:

- Reviews monitoring results and verifies discharge violations
- Tracks and reviews IU's responses to ensure that the IU has responded, in a timely manner, to Notices of Violations (NOVs), Compliance Meetings, and/or Compliance Schedules

designated contact person and knowledgeable staff, inspection of manufacturing/service facilities, review of facility records, inspection of wastewater drainage, discharge points, pretreatment facilities (if any), and inspection of material handling procedures and spill prevention facilities. Where applicable, the staff shall inspect and copy pertinent process and treatment log records, waste handling procedures and waste disposal records. In the case of a new or newly identified manhole or other discharge location(s), follow-up sampling by the District should be completed. The data and information obtained during the annual inspection should be compared to the current site information on file. Any differences should be noted, and any significant changes in discharge quantity or quality should be further evaluated by additional sampling, if necessary. The inspection form includes the checklist to ensure each item is reviewed, any deficiencies are noted in the comments section, and follow up actions required to be taken are included in the report and signed by the Pretreatment Inspector and IU representative.

5.6 Industrial Waste Survey

At least every five years, the District will conduct an Industrial Waste Survey (IWS). The goal of the IWS is to identify and locate non-permitted users that might be subject to regulation by the District's Industrial Pretreatment Program. The survey will help the District understand the nature of wastewater discharged by commercial and industrial customers in the City of East Chicago. A list of potential IUs will be compiled by reviewing lists of businesses licensed by the City's Planning Department and users billed by the City's Water Department. Another resource for compiling the potential IU list will be reviewing facilities listed in the USEPA Envirofacts database. There will be ongoing coordination with the City's Planning and Water Departments to keep a list of businesses in the City as up to date and accurate as possible.

6.0 DESCRIPTION OF ENFORCEMENT ACTIONS

Following are the types of Enforcement Action that may be undertaken by the District:

6.1 Informal Notice

An informal notice is initiated by the PC. An informal notice may be a documented phone call, written warning, or a site meeting notifying the IU of minor incidents that have occurred and actions that need to be taken to prevent the reoccurrence of the violation. All supporting documentation regarding the violation and related enforcement actions shall be documented in writing and maintained by the PC in the IU file. After its initial Enforcement Response, the District will closely track the IU's progress toward compliance. Follow-up compliance activities will begin no later than 30 days after the initial Enforcement Response is taken. When follow-up activities indicate that the violation persists or that satisfactory progress is not being made, the District will escalate its Enforcement Response. Repeat performance of the same incident or escalation of the incident will result in escalated enforcement action.

6.2 Notice of Violation

Per 13.13.6.03 of the SUO, a NOV is the initial formal enforcement action for a violation. A facsimile transmission and/or electronic mail shall notify the IU signatory authority of the violation within five working days of identifying the violation and shall require a written response within 15 business days of the IU's receipt of the NOV, including an explanation of the cause of the violation and a compliance plan for correcting the problem. A certified letter will also be sent to the IU signatory authority.

6.3 Civil Penalties

A civil penalty is a punitive monetary charge assessed by the District to an IU who is found to have violated any provision of the SUO, its permit(s), and/or administrative orders. Each day on which noncompliance occurs or continues shall be deemed a separate and distinct violation. The purpose of the

civil penalty is to recover the economic benefit of noncompliance and to deter future violations. Per Section 13.13.7.01, the penalty shall not exceed the amount listed below for each offense, or if not listed, then a minimum amount of \$1,000.00 for each offense. Unless otherwise specified below, each day will be deemed a separate offense.

<u>Nature of Violation/ Exceedance</u>	<u>Penalty</u>
Exceedance Of Local Limit	
Discharger with average daily flow of 0 - 10,000 gpd	\$1,000
Discharger with average daily flow of 10,001 - 25,000 gpd	up to \$1,500
Discharger with average daily flow of 25,001 - 50,000 gpd	up to \$2,000
Discharger with average daily flow greater than 50,000	up to \$2,500
Exceedance of Categorical Standard	up to \$2,500
Discharges of Prohibited Substances or Unauthorized Discharge	
Discharger with average daily flow of 0 - 10,000 gpd	\$1,000
Discharger with average daily flow of 10,001- 25,000 gpd	up to \$1,500
Discharger with average daily flow of 25,001 - 50,000 gpd	up to \$2,000
Discharger with average daily flow greater than 50,000 gpd	up to \$2,500
Failure to submit Discharge Volume Reports, within five business days of stated due date (due date is the 10th day of the month, unless due date falls on Saturday, Sunday or legal holiday, then due date is next business day) per day thereafter until report is received	\$1,000
Failure to submit other required reports, within five business days of stated due date	\$1,000
Failure to meet Compliance Schedule Milestone, per day, until milestone requirement is satisfied	up to \$2,500
Falsification of Submitted Information	up to \$2,500
Discharge which causes an incident of upset, interference, or pollutant pass-through at the POTW	up to \$2,500
Discharge which results in actual or potential threat to POTW, its personnel, the general public, the environment, or the quality of the POTW's sludge	up to \$2,500
Discharge which causes any condition of imminent danger	up to \$2,500

6.4 Show Cause Hearing

Per Section 13.13.6.04 of the SUO, a Show Cause Hearing requires that an IU appear before the PC, CM, and/or DU to discuss the cause and effect of the violation, as well as why a proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken.

6.5 Administrative Order

An Administrative Order (AO) is the formal notification to the IU requiring the IU to undertake or to cease specified activities by a specified deadline. It is the first formal response to a finding of significant noncompliance (unless factors necessitate escalated enforcement actions). Per 13.13.6.05 of the SUO, below are the different types of AOs that may be issued:

a. Consent Order

A Consent Order is a mutual agreement between the District and IU responsible for noncompliance and shall include specific actions to be taken by the IU to correct the noncompliance within a time period specified by the document. Each Consent Order shall require the cessation of all discharges in the event of failure by the IU to achieve total compliance by the final date for compliance stated in the Consent Order.

b. Compliance Order

A Compliance Order is a formal time and management schedule contained in an AO established for the non-compliant IU to achieve immediate and total compliance with its permit. It is established for IUs who fail to comply with a Consent Order or fail to meet the categorical pretreatment standards or local standards. It contains increments of progress in the form of milestone dates for the commencement and completion of major events leading to compliance. Each Compliance Order shall require the cessation of all discharges in the event of failure by the IU to achieve total compliance by the final date for compliance stated in the Compliance Order.

c. Cease and Desist Orders

The District may issue a Cease and Desist Order to an IU that has violated, or continues to violate, any provision of the SUO, an individual wastewater discharge permit, Consent Order, Compliance Order, or any other pretreatment standard or requirement, or where the IU's past violations are likely to recur, directing it to cease and desist all such violations and directing the IU to immediately comply with all requirements; and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the IU.

6.6 Emergency Suspension of Service and Discharge Permits

The District may immediately suspend an IU's discharge, after informal notice to the IU, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Director of Utilities may also immediately suspend an IU's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

Any IU notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an IU's failure to immediately comply voluntarily with the Cease and Desist Order, the Director of Utilities may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director of Utilities may allow the IU to recommence its discharge when the IU has demonstrated to the satisfaction of the Director of Utilities that the period of endangerment has passed, unless the termination proceedings in Section 13.13.6.02 of the SUO are initiated against the IU.

A IU that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director of Utilities prior to the date of any show cause or termination hearing under 13.13.6.02 of the SUO.

6.7 Revocation of Permit or Termination of Discharge

Termination of discharge is the revocation of an IU's privilege to discharge non-domestic wastewater into the sewer system. Termination of discharge is used when the discharge from an IU presents imminent endangerment to the health or welfare of persons, or the environment; or threatens to interfere with POTW operations; or as an escalating enforcement action to a significant violation when a noncompliant IU fails to respond adequately to previous enforcement actions. Examples of instances of noncompliance that could lead to termination of discharge are listed in Section 13.13.6.02 of the SUO. Termination of discharge may be accomplished by physical severance of the IU's connection to the collection system, issuance of an AO (cease and desist order) which compels the IU to immediately terminate its discharge, revocation of the IU's discharge permit, or a court ruling. The IU will be notified prior to the termination of discharge and will be offered an opportunity to show cause under Section 13.13.6.04 of the SUO.

6.8 Cost Recovery

In addition to civil penalties imposed by the Director of Utilities, the IU shall be responsible for paying the following (but not limited to) costs incurred by the District for the IU's failure to comply:

- Cost of mileage and labor incurred in detecting and correcting the violation;
- Laboratory analysis costs associated with detecting and correcting the violation;
- Additional treatment costs caused by the violation or associated with detecting and correcting the violation;
- Costs of any additional equipment acquired or expended by the District for detecting or correcting the violation;
- Repair and/or replacement of any part of the sewer system damaged by the violation;
- Any liability, damages, fines or penalties incurred by the District as a result of the violation;
- Any and all expenses of outside professionals to include, but not limited to, engineers, scientists, and/or legal counsel; and,
- Other costs associated with the detection and correction of the violations.

6.9 Judicial Proceedings

Judicial Proceedings will be taken when it is deemed necessary to force the IU to correct the violation and comply with the permit. The District may petition the Circuit or Superior Court of Lake County, or the United States District Court if federal jurisdiction is available, through the District's Attorney for the issuance of a temporary restraining order, and preliminary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the IU.

7.0 ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide (ERG) designates several enforcement options for each type (or pattern) of noncompliance. The intent of the ERG is to provide direction for appropriate enforcement response and to ensure consistent enforcement for similar violations and circumstances. Factors that will be evaluated when determining the appropriate response are as follows:

- Compliance history of the IU

- Previous success of any prior enforcement actions against the IU (e.g. If historically NOV's have not been effective in returning the IU to compliance in a reasonable period of time, an AO would be a more appropriate response.)
- Magnitude of violation
- Duration of violation
- Violation's effect on the environment and/or public health
- Violation's effect on the POTW

7.1 Violations Resulting in Significant Noncompliance

Any violation that results in Significant Noncompliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise required by the enforcement response guide. The minimum level of enforcement used to address a SNC is the issuance of an AO. Per Section 13.13.6.13 of the SUO, the District will publish annually for public notice, a list of the IUs which, at any time during the previous 12 months, were determined to be SNC.

The following categories of SNC of IUs shall be subject to enforcement actions initiated by the District.

- Chronic violations of wastewater discharge limits, defined as those in which 66% or more of all of the measurements taken during a six month period exceed, by any magnitude, a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l).
- Technical review criteria (TRC) violations, defined as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC equals 1.4 for biochemical oxygen demand, total suspended solids, and fats, oil, and grease, and 1.2 for all other pollutants except pH).
- Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the District determines has caused, alone or in combination with other discharges, interference or pass through violations, including endangering the health of POTW personnel or the general public.
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority under 327 IAC 5-19-3(1) (G) to halt or prevent such a discharge.
- Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or AO for starting construction, completing construction, or attaining final compliance.
- Failure to provide, within 30 days after the due date, required reports such as:
 - baseline monitoring reports;
 - 90-day compliance reports;
 - periodic self-monitoring reports; and
 - progress reports on compliance in accordance with AO schedules.
- Failure to accurately report noncompliance.

- Any other violation or group of violations (which may include a violation of best management practices) that the District determines will adversely affect the operation or implementation of the approved District's pretreatment program.

7.2 Escalating Enforcement Response

Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on consecutive reporting periods, the violation occurs seasonally, or any other pattern of noncompliance is shown.

7.3 Violations Falling Under More Than One Category

Violations that fall under more than one category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

8.0 DEFINITIONS OF VIOLATIONS

8.1 Minor Sampling, Monitoring, or Reporting Deficiencies

- Reports/Correspondence submitted up to 10 business days late
- Reports improperly signed or certified
- Incomplete reports and/or chain-of-custody - first offense
- Transcription error
- Improper sampling or analytical procedure - first offense
- Late notification of violation to the District - first offense
- Failure to report any operational changes which affects the discharge flow rate but does not impact the permit - first offense
- Any other violation categorized as minor sampling, monitoring or reporting deficiencies by the District

8.2 Major Sampling, Monitoring, or Reporting Deficiencies

- Reports/Correspondence late by more than 10 but less than 30 business days
- Sampling point not accessible to the District
- Reports not certified
- Failure to report any operational changes which affects the discharge flow rate and impacts the permit
- Incomplete report or chain-of-custody information - repeat offense
- Failure to submit all the information that leads to the determination of a category of an IU
- Failure to use appropriate analytical methods (40 CFR 136)
- Failure to sample for a parameter
- Failure to report slug load discharge, illegal discharges or spills with no damage to POTW
- Unacceptable explanation for violation
- Improper sampling or analytical procedure - repeat offense
- Any other violation categorized as major sampling, monitoring or reporting deficiencies by the District

8.3 Critical Sampling, Monitoring, or Reporting Deficiencies

- Reports greater than 30 days late (SNC)

- Complete failure to sample, monitor, or report per the requirements found in the IU's permit
- Any deficiency of sampling, monitoring, or reporting procedure which places IU in SNC
- Failure to respond to a Show Cause Hearing or AO
- Illegal or unauthorized discharge that results in damage to the POTW
- Any violation of sampling, monitoring, or reporting procedures which directly or indirectly contributes to or is responsible for violation of the District's NPDES Permit.
- Any other violation categorized as critical sampling, monitoring or reporting deficiencies by the District

8.4 Unauthorized Discharge

- Discharge of any pollutant(s) from a location, process, source or categorical operation that has not been previously approved, identified or permitted.

8.5 Damages to the POTW

Occurs when the discharge from an IU causes:

- Harm to the POTW collection system, its accessories and wastewater treatment plant
- Interference with the biological operations of the plant
- Deterioration of sludge quality
- The District to violate its NPDES permit

9.0. TIME FOR ENFORCEMENT RESPONSES

- All violations will be identified and documented within five days of receiving compliance information.
- Initial enforcement responses (informal or formal) will occur within 15 days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.
- Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating service.
- All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement action within 30 days of the identification of SNC.